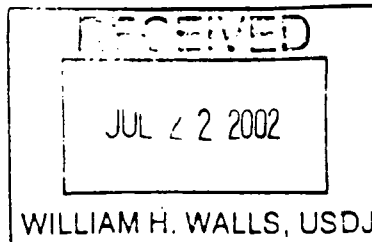


CLOSED



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U.S. DISTRICT COURT

2002 JUN -6 A 11:44

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

FILED

AUG 16 2002

UNITED STATES OF AMERICA,

Plaintiff,

v.

ACME ALLOYS  
ATKIN'S WASTE MATERIALS, INC.  
ATLANTIC BATTERY CORPORATION, A.K.A.  
POWER BATTERY CO., INC.  
GRANT MANUFACTURING & ALLOYING, INC.  
H. BIXON AND SONS, INC.  
LIBERTY SCRAP METAL COMPANY  
MAX WEINSTEIN & SONS, INC.  
SAAB METALS CORPORATION  
SUPERIOR COMPANIES  
UNITED HOLDINGS CO., INC.  
WOOSTER IRON & METAL CO., INC.

Defendants.

AT 8:30 M  
WILLIAM T. WALSH, CLERK

Civil Action

No. 02-2886 (WHW)

ENTERED

CONSENT DECREE

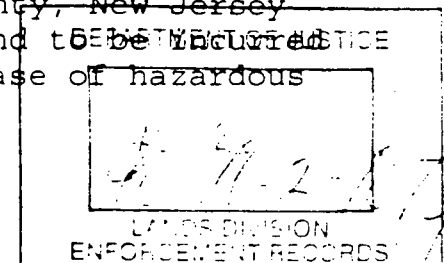
I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, seeking injunctive relief regarding the cleanup of the NL Industries, Inc., Superfund Site in Pedricktown, Salem County, New Jersey (the "Site"), and recovery of costs incurred and to be incurred in responding to the release or threat of release of hazardous substances at or in connection with the Site.

AUG 19 2002

WILLIAM T. WALSH, CLERK

*A. H. [Signature]*  
(Deputy Clerk)



B. As a result of the release or threatened release of hazardous substances, EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response actions in the future. In performing these response actions, EPA has incurred and will continue to incur response costs at or in connection with the Site.

C. The Site is bordered on the south by Pennsgrove-Pedricktown Road. The Site is bordered on the west by unused woodland and an intermittent stream (the "West Stream") which eventually flows into the Delaware River located 1.5 miles to the northwest. Route 130 runs in a northeasterly direction and lies approximately 1,000 feet northwest of the Site. The area immediately adjacent to the east is comprised of unused woodland, an inactive industrial facility and another intermittent stream which also indirectly flows into the Delaware River.

D. EPA records indicate that the Site was owned by NL Industries, Inc., ("NL") from 1972 until February 1983. EPA records further indicate that during its period of ownership, NL operated a secondary lead smelter at the Site, which was used to reclaim lead from used batteries. The reclamation process involved draining sulfuric acid from the batteries and smelting the lead plates down to useable lead product. Waste materials were disposed of at an on-Site landfill.

E. In October 1982, NJDEP entered into an Administrative Consent Order (the "NJ ACO") with NL. The NJ ACO required, among other things, that NL conduct a remedial program to address contaminated media at the Site and at the on-Site landfill.

F. On December 8, 1983, the Site was placed on the National Priorities List, which is found at 40 C.F.R. Part 300, Appendix B, and which has been promulgated pursuant to Section 113(a)(5)(B) of CERCLA, 42 U.S.C. §9605(a)(5)(B).

G. In February 1983, NL sold the Site to National Smelting of New Jersey ("NSNJ"). At that time, the NJ ACO was amended to include NSNJ and its parent corporation, National Smelting and Refining Co., Inc. ("NSR"), as parties. NSNJ operated the secondary lead smelter from 1983 until January 1984. In March 1984, NSNJ and NSR together filed for bankruptcy pursuant to Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §101 et seq. Since operations ceased in January 1984, the secondary lead smelter has remained inactive and, except for NL's maintenance of the on-Site landfill, the Site has been abandoned.

H. In July 1985, EPA sent general notice of potential liability letters to four parties ("PRPs"): NL, NSNJ, NSR and Standard Metals Corp.

I. On April 30, 1986, EPA entered into an Administrative Order on Consent, Index No. II CERCLA-60109 ("EPA AOC") with NL. The EPA AOC required NL to perform a Remedial Investigation and Feasibility Study ("RI/FS") for the entire Site under EPA oversight. The RI was completed in July 1991. The FS was completed in July 1993. The response action at the Site was divided into two operable units.

J. In December 1988, EPA initiated Phase I of a removal action to address hazardous conditions presenting the most significant risks to human health and to the environment. These removal activities included: constructing a fence to restrict access to the secondary lead smelter; encapsulating the slag piles to provide temporary protection from rain and wind erosion and to prevent contaminant migration, and installing warning signs around the Site.

K. In September 1989, EPA initiated Phase II of the removal action which included the off-Site removal of more than 40,000 pounds of arsenic, metallic sodium, red phosphorus and other hazardous substances. In addition, the slag piles were encapsulated a second time and dilapidated concrete retaining walls supporting the slag piles were reenforced and surrounded by berms to further limit releases of hazardous substances into the environment. Fence gates and locks on all building entrances were installed to upgrade building security.

L. In November 1990, EPA performed Phase III of the removal action. This phase of the removal action included repairing the damaged security fence, emptying deteriorated containers stored in the open and relocating their contents to existing covered areas where they were sampled. Rusted and deteriorated drums were also removed from the Site for recycling.

M. In June 1991, EPA sent additional PRPs notice of potential responsibility letters and demanded that all PRPs at the Site pay the United States \$700,000.00 for federal response costs already incurred.

N. During 1990 and 1991, EPA performed a Focused Feasibility Study ("FFS") for a portion of the response action at the Site designated as Operable Unit 2.

C. Pursuant to Section 117 of CERCLA, 42 U.S.C. §9617, EPA released the FFS and the Proposed Plan that identified EPA's proposed remedial action for Operable Unit 2. A notice of availability of the FFS and of the Proposed Plan was published in the Gloucester County Times and in the Today's Sunbeam. A public comment period for the Proposed Plan was held from July 17 to September 6, 1991. A public meeting was held on August 6, 1991 to accept public comments on the Proposed Plan.

F. On September 27, 1991, the Regional Administrator for EPA Region II executed the ROD which embodies EPA's selection of the remedy for Operable Unit 2. The remedy included: on-Site solidification/stabilization and disposal of slag and lead oxide materials; on-Site and off-Site treatment and disposal of contaminated debris; treatment of contaminated surfaces; off-Site treatment and disposal of contaminated standing water and sediments, and; appropriate environmental monitoring to ensure the effectiveness of the remedy.

G. In March 1992, EPA issued an Explanation of Significant Differences that partially modified the ROD to provide for the off-Site disposal of the slag and lead oxide materials.

H. On March 31, 1992, a Unilateral Administrative Order "UAC" was issued to 31 PRPs, ordering their performance of the Remedial Design and Remedial Action for Operable Unit 2, as selected in the ROD (as amended) for Operable Unit 2. The Remedial Action for Operable Unit 2 was completed pursuant to the terms of the UAC in September 1995.

I. In June 1992, EPA performed Phase IV of the removal action. This phase of the removal action consisted of replacing damaged wood shoring to two slag bin retaining walls, repairing the perimeter fence and building gates damaged by vandals, and upgrading the slag pile berms to control runoff.

J. On July 22, 1993, pursuant to Section 117 of CERCLA, 42 U.S.C. §9617, EPA released the RI Report, the FS Report, and the Proposed Plan that identified EPA's proposed remedial action for Operable Unit 1. A notice of availability of the RI Report, FS Report and Proposed Plan was published in Today's Sunbeam on July 22, 1993. A public comment period for the Proposed Plan was held from July 22 to September 19, 1993. A public meeting was held on August 2, 1993, to accept public comments on the Proposed Plan.

K. In September 1993, EPA initiated Phase V of the removal action. This phase of the removal action consisted of excavating, staging, testing and disposing of contaminated stream sediment in

the West Stream south of Route 130 and of soils adjacent to the West Stream affected by contaminated sediment deposition during flooding events.

V. On July 8, 1994, the Regional Administrator for EPA Region II executed the ROD which embodies EPA's selection of the Remedy for Operable Unit 1. The Remedy includes: excavating all soils and sediments in the East Stream and drainage channel located north of Route 130 which are contaminated with lead at levels exceeding 500 parts per million ("ppm"); treating via solidification/stabilization those soils and sediments classified as hazardous which are wastes under the Resource Conservation and Recovery Act; disposing of both the treated soils and sediments and the non-hazardous soils and sediments in a landfill to be constructed on the Site; extracting and treating contaminated groundwater with discharge of the treated effluent to the Delaware River, and; appropriate environmental monitoring to ensure the effectiveness of the remedy.

W. On May 15, 1995, EPA sent general notice letters to 16 additional PRPs. On that same date, EPA notified all PRPs at the Site that the Agency had elected to include the Site in the EPA Pilot Allocation Program in order to facilitate the settlement of the Remedial Design/Remedial Action for Operable Unit 1.

X. On June 10, 1996, EPA mailed an Administrative Order on Consent for the performance of the Operable Unit 1 Remedial Design by: Globe Union (a/k/a Johnson Controls, Inc.); ESB (a/k/a Exide Corporation); Gould (a/k/a GNB Technologies, Inc.); C & D Battery (a/k/a C & D Technologies, Inc.); and Prestolite Batteries, Inc. (a/k/a Allied Signal, Inc.). The Administrative Order on Consent was later amended to require the PRPs to also perform specified removal activities.

Y. On January 28, 1998, EPA issued a proposed Consent Decree to five PRPs: Globe Union (a/k/a Johnson Controls, Inc.); ESB (a/k/a Exide Corporation); Gould (a/k/a GNB Technologies, Inc.); C & D Battery (a/k/a C & D Technologies, Inc. and; NL Industries, Inc. EPA requested these five PRPs to conduct the Operable Unit 1 Remedial Action and to complete specified removal activities at the Site. EPA also requested these PRPs pay past costs at the Site and all future oversight costs associated with the work to be performed under the Consent Decree. Negotiations commenced and six PRPs ultimately signed the Consent Decree (the sixth PRP was Prestolite Batteries, Inc. (a/k/a Allied Signal, Inc.)). The Consent Decree was entered as an order of the United States District Court for the District of New Jersey on April 1, 1999.

Z. On July 18, 2000, the United States lodged a Consent Decree with the United States District Court for the District of New Jersey resolving the liability of 49 PRPs who contributed a small volume of waste to the Site.

AA. The Regional Administrator of EPA, Region II, or her delegatee, has determined the following:

1. prompt settlement with each Settling Defendant is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1);

2. the payment to be made by each Settling Defendant under this Consent Decree involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1), based upon EPA's estimate that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund and by private parties is over \$29 million; and

3. the amount of hazardous substances contributed to the Site by each Settling Defendant and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each Settling Defendant are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A). This is because the amount of hazardous substances contributed to the Site by each Settling Defendant does not exceed 2.0% of the total quantity of hazardous substances at the Site, and the hazardous substances contributed by each Settling Defendant to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site. See Appendix A and Appendix B.

BB. The Settling Defendants do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

CC. The United States and Settling Defendants agree that settlement without further litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving this action with respect to Settling Defendants.

THEREFORE, with the consent of the Parties to this Consent Decree, it is ORDERED, ADJUDGED, and DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 9613(b), and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States and upon Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate or other legal status of a Settling Defendant, including but not limited to, any transfer of assets or real or personal property shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

## **IV. STATEMENT OF PURPOSE**

3. By entering into this Consent Decree, the mutual objectives of the Parties are:

a. to reach a final settlement among the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), that allows Settling Defendants to make a cash payment, including a premium, to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating a substantial number of potentially responsible parties from further involvement at the Site; and

c. to obtain settlement with Settling Defendants for their fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and by private parties, to provide for full and complete contribution protection for Settling Defendants with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

## V. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

b. "Consent Decree" or "Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities.

e. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code 26 U.S.C. § 9507.

f. "Financial Information" shall mean those financial documents that certain Settling Defendants submitted to EPA in response to its letters dated July 6, 1999 and August 26, 1999 and any supplements thereto.

g. "Interest" shall mean interest at the current rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607 a .

h. "Municipal Sewage Sludge" shall mean any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage, and may include residue removed, all or in part, during the treatment of wastewater from manufacturing or processing operations, provided that such residue has essentially the same characteristics as residue



removed during the treatment of domestic sewage.

i. "Municipal Solid Waste" shall mean household waste and solid waste collected from non-residential sources that is essentially the same as household waste. While the composition of such wastes may vary considerably, municipal solid waste generally is composed of large volumes of non-hazardous substances (e.g. yard waste, food waste, glass, and aluminum) and can contain small amounts of wastes as typically may be accepted in RCRA Subtitle D landfills.

j. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

k. "Parties" shall mean the United States and the Settling Defendants.

l. "Response Costs" shall mean all costs of response as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

m. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

n. "Settling Defendants" shall mean those persons, corporations or other entities listed in Appendix A (De Minimis Settling Defendants) and Appendix B (Limited Ability to Pay De Minimis Settling Defendants).

o. "Site" shall mean the NL Industries, Inc., Superfund Site, encompassing approximately 44 acres, located at Pennsgrove-Pedricktown Road in Pedricktown, Oldmans Township, Salem County, New Jersey.

p. "United States" shall mean the United States Department of Justice and the United States Environmental Protection Agency.

## VI. PAYMENT

5. Within 30 days of entry of this Consent Decree, each Settling Defendant shall pay the amount set forth in either Appendix A or Appendix B and/or Appendix C, except that Settling Defendant H. Bixon & Sons, Inc. shall make payments in accordance with the payment schedule set forth in Appendix C, to the U.S. Department of Justice in accord with the procedure set forth in Paragraph 7 in Section VI. of this Decree.

6. Each Settling Defendant's payment includes an amount for: a) past response costs incurred at or in connection with the Site; b) projected future response costs to be incurred at or in connection with the Site; and c) a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any private party, will exceed the estimated total response costs upon which Settling Defendants' payments are based. Some Settling Defendants will receive a credit for any funds they contributed toward response activities at the Site prior to the entry of this Consent Decree as noted in Appendix A.

7. The entire amount to be paid pursuant to this Consent Decree shall be deposited in the NL Industries, Inc., Superfund Site De Minimis Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance the response action at or in connection with the Site. Any balance remaining in the NL Industries, Inc., Superfund Site De Minimis Special Account, after all response actions have been completed, shall be transferred by EPA to the EPA Hazardous Substance Superfund.

Each payment shall be made by Electronic Funds Transfer ("EFT" or "wire transfer") to the U.S. Department of Justice account in accordance with the current wire transfer procedures, referencing the USAO file number to be assigned, the CERCLIS Site ID Number NJD061843249, EPA Finance Site ID Code 0261, and DOJ Case Number 90-11-2-1075/2. Payment shall be made in accordance with instructions obtained by Settling Defendant from the Financial Litigation Unit of the Office of the United States Attorney for the District of New Jersey. Any payment received by the U.S. Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

8. At the time of payment, each Settling Defendant shall send notice that such payment has been made to:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
DJ No. 90-11-2-1075/2

Chief, New Jersey Superfund Branch  
Office of Regional Counsel  
U.S. EPA Region II  
290 Broadway - 17th Floor  
New York, NY 10007-1866

Attn: NL Industries, Inc., Superfund Site Attorney

Chief, Financial Management Branch  
Office of Policy and Management  
U.S. EPA Region II  
290 Broadway - 29th Floor  
New York, NY 10007-1866

Emergency and Remedial Response Division  
U.S. EPA Region II  
290 Broadway - 19<sup>th</sup> Floor  
New York, NY 10007-1866

Attn: NL Industries, Inc., Remedial Project Manager

#### VII. FAILURE TO MAKE PAYMENT

9. If any Settling Defendant fails to make full payment within the time required by Paragraph 5, that Settling Defendant shall pay Interest on the unpaid balance. In addition, if any Settling Defendant fails to make full payment as required by Paragraph 5, the United States may, in addition to any other available remedies or sanctions, bring an action against that Settling Defendant seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(1) of CERCLA, 42 U.S.C. 9622(1), for failure to make timely payment.

#### VIII. CERTIFICATION OF SETTLING DEFENDANT

10. By signing this Consent Decree, each Settling Defendant certifies, individually, that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and

d. Settling Defendants in Appendix B and Appendix C also certify that each has submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that, since submission of Financial Information in response to EPA's July 6, 1999 and/or August 26, 1999 letters, its financial situation has not materially changed on an objective basis.

#### IX. COVENANT NOT TO SUE BY UNITED STATES

11. In consideration of the payments that will be made by Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Section X (Reservations of Rights by United States), the United States covenants not to sue or to take administrative action against any of the Settling Defendants pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9616 or 9607, relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect for each Settling Defendant upon receipt of that Settling Defendant's payment as required by Section VI of this Consent Decree. With respect to each Settling Defendant, individually, this covenant not to sue is conditioned upon: a) the satisfactory performance by Settling Defendant of all obligations under this Consent Decree; and b) the veracity of the information provided to EPA by Settling Defendant relating to Settling Defendant's involvement with the Site. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

#### X. RESERVATIONS OF RIGHTS BY UNITED STATES

12. The covenant not to sue by the United States set forth in Paragraph 11 does not pertain to any matters other than to those expressly specified in Paragraph 11. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters including, but not limited to, the following:

a. liability for failure to meet a requirement of this Consent Decree;

b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; or

d. liability arising from the future arrangement for disposal or treatment of a hazardous substance, pollutant or contaminant at the Site after the date of lodging of this Consent Decree.

13. Notwithstanding any other provision in this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings against any individual Settling Defendant in this action or in a new action or to issue an administrative order to any individual Settling Defendant seeking to compel that Settling Defendant to perform response actions relating to the Site, and/or to reimburse the United States for additional costs of response, if information is discovered which indicates that such Settling Defendant contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such Settling Defendant no longer qualifies as a de minimis party at the Site because Settling Defendant contributed greater than 2.0% of the hazardous substances at the Site, or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site.

14. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, with respect to a Settling Defendant, if the Financial Information provided by the Settling Defendant, or the financial certification made by the Settling Defendant in Subparagraph 10.d, is false or, in any material respect, inaccurate.

#### XI. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

15. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Site or this Consent Decree including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response activities at the Site; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

16. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

17. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against each other with regard to the Site pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613.

18. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if:

a. any materials contributed by such person to the Site constituting Municipal Solid Waste ("MSW") or Municipal Sewage Sludge ("MSS") did not exceed 0.2% of the total volume of waste at the Site; and

b. the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of (i) 0.002% of the total volume of waste at the Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials.

This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with

respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

#### **XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

19. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The United States and Settling Defendants each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

20. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue included in Paragraph 11.

21. The Parties agree, and by entering this Consent Decree this Court finds, that each Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 102(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5), for matters addressed in this Consent Decree. The matters addressed in this Consent Decree are all response actions taken and to be taken by the United States and by private parties, and all response costs incurred and to be incurred by the United States and by private parties, at or in connection with the Site.

#### **XIII. RETENTION OF JURISDICTION**

22. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

#### **XIV. INTEGRATION/APPENDICES**

23. This Consent Decree and its appendices constitute the

final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached and incorporated into this Consent Decree:

Appendix A is the list of De Minimis Settling Defendants, their waste contribution and their payment schedule.

Appendix B is the list of Limited Ability to Pay De Minimis Settling Defendants, their waste contribution and their payment schedule.

Appendix C is a payment schedule for H. Bixon & Sons, Inc.

#### **XV. RETENTION OF RECORDS**

24. Until 10 years after the entry of this Consent Decree, Settling Defendants shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

25. At the conclusion of this document retention period, Settling Defendants shall notify the United States and State at least 90 days prior to the destruction of any such records or documents, and upon request by the United States or State, Settling Defendants shall deliver any such records or documents to the EPA or State. Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal or state law. If Settling Defendants assert such a privilege, it shall provide the Plaintiffs with the following:

(1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to



Plaintiffs in redacted form to mask the privileged information only. Settling Defendants shall retain all documents, records, and information that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved.

#### **XVI. PUBLIC COMMENT**

26. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States shall file with the Court any written comments received and the United States' response thereto. The United States reserves the right to withdraw or withhold its consent if comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper or inadequate. Settling Defendants consent to entry of this Consent Decree without further notice, and the United States reserves the right to oppose an attempt by any person to intervene in this civil action.

#### **XVII. EFFECTIVE DATE**

27. The effective date of this Consent Decree shall be the date of entry by this Court, following public comment pursuant to Paragraph 26.

#### **XVIII. SIGNATORIES/SERVICE**

28. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, or his/her delegatee, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such party to this document.

29. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

30. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service including, but not limited to, service of a summons, in .

that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court.

31. Contemporaneous with the filing of the complaint in this action, the United States shall file a stipulation or motion for an extension of time to answer the complaint in favor of each Settling Defendant, which extension shall run until 30 days after the United States withdraws or withholds its consent pursuant to Section XVI (Public Comment) or the Court declines to enter this Consent Decree.

SO ORDERED THIS

16<sup>th</sup> DAY OF August, 2022

  
United States District Judge

HON. WILLIAM H. WALLS

THE UNDERSIGNED PARTIES enter into this Consent Decree relating to the NL Industries, Inc., Superfund Site, Pedricktown, Oldmans Township, Salem County, New Jersey:

FOR THE UNITED STATES OF AMERICA

Date: 6-1-83



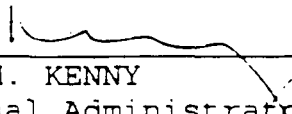
CATHERINE R. MCCABE  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530

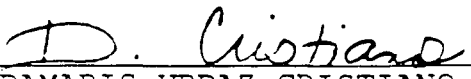


ELISE FELDMAN (EF1204)  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611  
(202) 514-3483

ROBERT J. CLEARY  
United States Attorney  
District of New Jersey

SUSAN C. CASSELL  
Assistant United States Attorney  
District of New Jersey  
970 Broad Street  
Room 501  
Newark, New Jersey 07102

  
\_\_\_\_\_  
JANE M. KENNY  
Regional Administrator  
Environmental Protection  
Agency, Region II  
290 Broadway - 26th Floor  
New York, New York 10007-1866

  
\_\_\_\_\_  
DAMARIS URDAZ CRISTIANO  
Assistant Regional Counsel  
Environmental Protection  
Agency, Region II  
290 Broadway - 17th Floor  
New York, New York 10007-1866

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the NL Industries, Inc., Superfund Site.

FOR DEFENDANT ACME ALLOYS  
(Please Type the Name of the Defendant)

Date: MARCH 12, 2002 Signature: *Sidney S. Tobin*

Name: SIDNEY S. TOBIN  
(Please Type the Name of the Signatory)

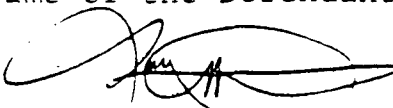
Address: P.O. BOX3801  
1737 WASHINGTON AVE.  
PHILA., PA. 19146

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the KL Industries, Inc., Superfund Site.

FOR DEFENDANT Atkin's Waste Materials, Inc.  
(Please Type the Name of the Defendant)

Date: 3/6/02 Signature: 

Name: Louis Atkin  
(Please Type the Name of the Signatory)

Address: 80 Steel Street  
Rochester, NY 14606

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: David J. Freeman

Title: Attorney at Law

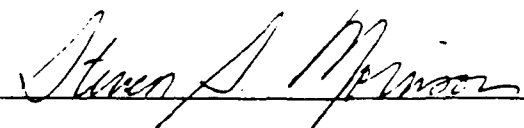
Address: Paul, Hastings, Janofsky & Walker LLP  
Park Avenue Tower  
75 East 55th Street

New York, N. Y. 10022-3205

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the NL Industries, Inc., Superfund Site.

FOR DEFENDANT Atlantic Battery Corp., A.K.A Power Battery Co., Inc.  
(Please Type the Name of the Defendant)

Date: 3/26/02

Signature: 

Name: Steven S. Morrison  
(Please Type the Name of the Signatory)

Address: Power Battery Co., Inc.  
25 McLean Blvd  
Paterson, NJ 07514

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the NL Industries, Inc., Superfund Site.

FOR DEFENDANT Grand Manufacturing Salling Inc.  
(Please Type the Name of the Defendant)

Date: 3-10-02 Signature: *Daniel Craig*

Name: DANIEL P. CRAIG  
(Please Type the Name of the Signatory)

Address: P.O. Box 69

Birdsboro, Pa. 18508

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

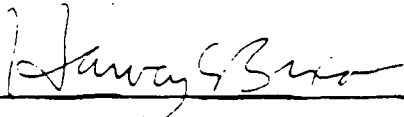
\_\_\_\_\_



THE UNDERSIGNED PARTY enters into this Consent Decree relating to the NL Industries, Inc., Superfund Site.

FOR DEFENDANT H. Bixon & Sons, Inc.  
(Please Type the Name of the Defendant)

Date: 3/7/02

Signature: 

Name: Harvey C. Bixon

(Please Type the Name of the Signatory)

Address: 808 Washington Ave.

New Haven, CT 06519

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Jennifer E. Sills

Title: Attorney

Address: Carmody & Torrance LLP  
50 Leavenworth ST.

Waterbury, CT 06702



THE UNDERSIGNED PARTY enters into this Consent Decree relating to the NL Industries, Inc., Superfund Site.

FOR DEFENDANT

Max Weinstein & Sons, Inc  
(Please Type the Name of the Defendant)

Date:

3/2/02

Signature: \_\_\_\_\_



Name:

Lee Weinstein

(Please Type the Name of the Signatory)

Address:

MAX WEINSTEIN & SONS INC  
2426 MORRIS AVE  
UNION, N.J. 07083-5708

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:

SAME AS

Title:

ABOVE

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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MAR 6 2002

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the NL Industries, Inc., Superfund Site.

FOR DEFENDANT Saab Metals Corporation  
(Please Type the Name of the Defendant)

Date: 4-1-92 Signature: *Fred Saab*

Name: Fred Saab, Secretary  
(Please Type the Name of the Signatory)


Address: 2002 South 12th Street  
Allentown, PA 18103

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Fred Saab  
Title: Secretary  
Address: 2002 South 12th Street  
Allentown, PA 18103

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the NL Industries, Inc., Superfund Site.

FOR DEFENDANT Superior Companies  
(Please Type the Name of the Defendant)

Date: 3/4/2002 Signature: 

Name: Michael Denby  
(Please Type the Name of the Signatory)

Address: 40 Lewis and Roca  
40 North Central  
Phoenix, AZ 85004

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: L and R Service Co.  
Title: Statutory Agent  
Address: 40 North Central  
Phoenix, AZ 85004

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the NL Industries, Inc., Superfund Site.

FOR DEFENDANT United Holdings Co., Inc.  
(Please Type the Name of the Defendant)

Date: 03/2/02 Signature: Thomas M. Wood Jr.

Name: Thomas M. Wood Jr.  
(Please Type the Name of the Signatory)

Address: Norbury, Quinn Gilman  
One South St. 27th Floor  
Baltimore Md. 21202

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Thomas M. Wood Jr.  
Title: Attorney for United Holdings Co., Inc.  
Address: One South St.  
27th Floor  
Baltimore Md. 21202

## APPENDIX A

### WASTE CONTRIBUTION AND PAYMENT SCHEDULE FOR DE MINIMIS SETTLING DEFENDANTS

| <u>GENERATOR</u>  | <u>%CONTRIBUTION</u> | <u>ALLOCATION</u> | <u>PAYMENT DUE</u>     |
|---|----------------------|-------------------|------------------------|
| ACME ALLOYS   | 0.002577             | \$ 1,010.87       | \$ 316.66 <sup>1</sup> |
| ATKIN'S WASTE<br>MATERIALS, INC.                                      | 0.051573             | \$20,231.92       | \$20,231.92            |
| ATLANTIC BATTERY<br>CORPORATION,<br>A.K.A. POWER<br>BATTERY CO., INC. | 0.021342             | \$ 8,372.34       | \$ 8,372.34            |
| GRANT<br>MANUFACTURING &<br>ALLOYING, INC.                            | 0.024021             | \$ 9,423.19       | \$ 0.00 <sup>2</sup>   |
| SUPERIOR<br>COMPANIES   | 0.015505             | \$ 6,082.73       | \$ 6,082.73            |
| UNITED HOLDINGS<br>CO., INC.  | 0.144555             | \$56,708.46       | \$56,708.46            |
| WOOSTER IRON &<br>METAL CO., INC.                                     | 0.018940             | \$ 7,430.11       | \$ 0.00 <sup>3</sup>   |

<sup>1</sup> Acme Alloys contributed \$694.21 for the performance of response activities that were required at the Site pursuant to the terms of a Unilateral Administrative Order issued by EPA in 1992. It was later determined that it was a de minimis contributor to the Site and is, accordingly, granted a credit towards its payment amount under this Consent Decree.

<sup>2</sup> Grant Manufacturing & Alloying Inc. contributed \$11,229.78 for the performance of response activities that were required at the Site pursuant to the terms of a Unilateral Administrative Order issued by EPA in 1992. It was later determined that it was a de minimis contributor, and is, accordingly, granted a credit for its payment amount under this Consent Decree.

<sup>3</sup> On October 19, 1999, Wooster Iron Metal Co. Inc. paid \$7,430.11 via check to EPA, for response activities at the Site and will receive a credit for its payment amount under this Consent Decree. Wooster Iron & Metal Co., Inc. has merged with Metallics Recycling.

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the NL Industries, Inc., Superfund Site.

FOR DEFENDANT Hoover Iron & Metal Inc  
(Please Type the Name of the Defendant)

Date: 2-2-02 Signature: [Signature]

Name: David Speth  
(Please Type the Name of the Signatory)

Address: Box 170-6  
Lucas Ohio 44191

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: David Speth  
Title: Owner  
Address: Box 170-6  
Lucas Ohio 44191

RECEIVED  
APR 10 3 2002



APPENDIX B

WASTE CONTRIBUTION AND PAYMENT SCHEDULE FOR  
LIMITED ABILITY TO PAY DE MINIMIS SETTLING DEFENDANTS

| <u>GENERATOR</u>               | <u>%CONTRIBUTION</u> | <u>ALLOCATION</u> | <u>PAYMENT DUE</u>        |
|--------------------------------|----------------------|-------------------|---------------------------|
| LIBERTY SCRAP<br>METAL COMPANY | 0.391615             | \$153,628.92      | \$ 42,000.00              |
| H. BIXON &<br>SONS, INC.       | 1.279612             | \$501,986.72      | \$120,000.00 <sup>4</sup> |
| MAX WEINSTEIN<br>& SONS, INC.  | 0.073255             | \$ 28,737.85      | \$ 500.00                 |
| SAAB METALS<br>CORPORATION     | 0.081912             | \$ 32,133.90      | \$ 3,500.00               |

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See Appendix C.

## APPENDIX C

### **PAYMENT SCHEDULE FOR H. BIXON & SONS, INC.**

1. Settling Defendant, H. Bixon & Sons, Inc., shall pay \$120,000 plus Interest, to the EPA Hazardous Substance Superfund in reimbursement of Past and Future Response costs, in accordance with the provisions of this Paragraph. Within 30 days of the effective date of this Consent Decree, H. Bixon & Sons, Inc. shall pay to the EPA Hazardous Substance Superfund \$30,000 in accordance with the instructions below. H. Bixon & Sons, Inc. shall pay the remaining amount in three equal installments of \$30,000, plus Interest, with the first installment due within one year of the date of entry of the Consent Decree, and the remaining two installments shall be made on each succeeding anniversary of the date of entry of the Consent Decree. The payments required to be made pursuant to this section shall be made via FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number to be assigned, the CERCLIS Site ID Number NJD061843249, EPA Finance Site ID Code 0261, and DOJ case number 90-11-2-1075/2. Payments shall be made in accordance with the instructions provided in Section VI. of the Consent Decree.

2. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. To ensure that payment is properly recorded, H. Bixon & Sons, Inc. shall send a letter, within one week of the EFT, which references the date of the EFT, the payment amount, the name of the Site, the case number and its name and address to the United States as specified in Section VI.8. of the Consent Decree.

3. By its signature to this Consent Decree, H. Bixon & Sons, Inc. certifies to the best of its knowledge and belief that the information concerning its financial resources and ability to pay that it has provided to the United States is true, accurate and complete. The United States has relied upon such information in agreeing to the settlement contained herein with respect to H. Bixon & Sons, Inc. In the event that the information provided by H. Bixon & Sons, Inc. is false or misleading in any material respect or fails to disclose material information bearing on financial resources or ability to pay Past and Future Response

Costs, then the United States' covenants not to sue set forth in Paragraph 11 of this Consent Decree are voidable as to H. Bixon & Sons, Inc. in the sole discretion of the United States, and the United States shall be free to pursue its claims pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, against H. Bixon & Sons, Inc. H. Bixon & Sons, Inc. hereby waives any statute of limitations defense that it may otherwise have had if the United States pursues H. Bixon & Sons, Inc.